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Message Text

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ACTION L-02

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R 211810Z MAR 75
FM AMEMBASSY LA PAZ
TO SECSTATE WASHDC 6068

UNCLAS LA PAZ 2047

E.O. 11652: N/A
TAGS: EINV, BL
SUBJECT: CALVO CLAUSE

REF: STATE 024007

1. GENERAL PRINCIPLE THAT FOREIGN INVESTORS CANNOT MAKE CLAIMS THROUGH DIPLOMATIC CHANNELS EXISTS IN BOLIVIAN LAW BUT DOCTRINE APPARENTLY HAS NOT BEEN EXTENSIVELY DEVELOPED. LEGAL PRINCIPLE HAS NOT IN PRACTICE INTERFERED WITH NECESSARY DIPLOMATIC REPRESENTATIONS.

2. ARTICLE 24 OF 1967 BOLIVIAN CONSTITUTION STATES THAT "FOREIGN COMPANIES AND SUBSIDIARIES ARE SUBJECT TO BOLIVIAN LAW AND IN NO CASE SHALL THEY INVOKE SPECIAL STATUS NOR APPEAL TO DIPLOMATIC CLAIMS." SIMILAR PROVISIONS HAVE BEEN INSERTED IN OTHER LAWS. TITLE III, CHAPTER 15, PAGE 1 OF 1972 HYDROCARBONS LAW STATES "ANY PERSON, NATURAL OR LEGAL, WHO ENTERS INTO A CONTRACT WITH YPFB ... IS OBLIGED TO RENOUNCE ALL RIGHTS TO MAKE ANY CLAIMS VIA DIPLOMATIC CHANNELS." (YPFB IS STATE PETROLEUM CORPORATION.) RECENTLY DRAFTED PETROLEUM PRODUCTION CONTRACTS REFER TO HYDROCARBON LAW BUT DO PROVIDE FOR ARBITRATION PROCEDURE. IN CASE OF DISPUTE FOREIGN COMPANIES AND YPFB CAN EACH APPOINT ONE ARBITRATOR, WHO TOGETHER SELECT THIRD. FOREIGN COMPANIES, ARBITRATOR PRESUMABLY CAN BE FOREIGNER. IF COMPANIES, ARBITRATOR CANNOT AGREE ON THIRD ARBITRATOR, BOLIVIAN ENGINEERS' SOCIETY WILL APPOINT HIM. IF ARBITRATION FAILS DISPUTE MUST BE RESOLVED BY BOLIVIAN COURTS.

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3. BOLIVIA HAS ADOPTED PROVISIONS OF DECISION 24 OF ANDEAN PACT

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AND ITS ART. 50 AND ART. 51 COULD BE APPLIED HERE. BOLIVIA'S OWN INVESTMENT LAW MAKE NO MENTION OF DISPUTE SETTLEMENT, ALTHOUGH INDIVIDUAL INVESTMENT INCENTIVE CONTRACTS OFTEN HAVE CLAUSE STATING DISPUTES WHICH ARISE WILL BE ADJUDICATED IN BOLIVIAN COURTS. GOVT. CONTRACT SIGNED WITH JOINT VENTURE INCLUDING US FIRM DRESSER HAD SUCH LANGUAGE.

4. IN ACTUAL PRACTICE EMBASSY CAN RECALL NO INSTANCES WHERE INFORMAL DIPLOMATIC REPRESENTATION WAS REBUFFED. THERE HAVE BEEN NO RECENT CASES OF FORMAL DIPLOMATIC CLAIMS. EVEN GULF AND MINA MATILDE CASES WERE HANDLED THROUGH "GOOD OFFICEZ," ALBEIT WITH VERY ACTIVE REPRESENTATION ON OUR PART.
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